

**Supplemental Letter of Findings Number: 04-20181578**  
**Sales/Use Tax**  
**For Tax Years 2014 - 2016**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Company was not able to establish that the purchase of a fertilizer applicator repair parts, feed mill repair parts, and fertilizer blender were exempt from sales tax.

### ISSUE

#### I. Sales/Use Tax—Equipment.

**Authority:** IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-5-2; IC § 6-2.5-3-2; IC § 6-2.5-8-3; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Aztec Partners, LLC v. Indiana Dep't of State Revenue*, 35 N.E.3d 320 (Ind. Tax Ct. 2015); [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-10](#); Sales Tax Information Bulletin 9 (July 2012); Sales Tax Information Bulletin 9 (November 2015).

Taxpayer protests the imposition of use tax.

### STATEMENT OF FACTS

Taxpayer operates as a feed dealer, feed mill, a store and delivery service. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for the years 2014 through 2016. As a result of the audit, the Department issued proposed assessments. Taxpayer filed a protest regarding the proposed assessments. Letter of Findings 04-20170973 was issued and sustained Taxpayer in part and denied in part. Taxpayer requested a rehearing. An administrative rehearing was held, and this Supplemental Letter of Findings results. Additional facts will be provided below.

#### I. Sales/Use Tax—Equipment.

### DISCUSSION

In its rehearing, Taxpayer protests three issues: repair parts for the fertilizer application equipment; repair parts for the feed mill, and the fertilizer blender. This decision will discuss the fertilizer application equipment separate from the repair parts for the feed mill and the fertilizer blender.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. *The retail merchant shall collect the tax as agent for the state.* (Emphasis added).

Therefore, retail merchants are required to collect sales tax on retail transactions, unless the transaction is exempt from sales tax.

Use tax is at issue in the present protest, is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when sales tax is not paid at the time tangible personal property is purchased, use tax will be imposed unless the purchase is eligible for an exemption.

***Fertilizer Application Equipment:***

Taxpayer protests the "repair parts for the fertilizer applicator listed on expensed purchase page." These fertilizer applicator repair parts were purchased on March 7, 2014 and "IB [9] dated July 2012, in effect on the date of purchase, specifically exempts this purchase on page no. 5 in example no. 5. "

Taxpayer's argument requires an examination of two versions of the Department's Sales Tax Information Bulletin 9 (i.e., 2012 and 2015) and specifically the relevant Section B examples. With that in mind, Sales Tax Information Bulletin 9 (July 2012) 20120725 Ind. Reg. 045120427NRA, states in relevant part:

- 5. Corporation C is engaged in the business of selling agricultural chemicals and fertilizers to farmers. Corporation C purchases an applicator that will be used to spread the chemicals and fertilizer on its customer's fields. The purchase of the applicator is exempt from tax because the application of fertilizers and agricultural chemicals is necessary and plays a key role in the raising of crops.
- 6. When used by entities occupationally engaged in agricultural production, fertilizer and seed tenders are exempt because these specially outfitted trucks are used to move fertilizer and seed from *temporary* storage locations to the field where exempt items will be used as an essential and integrated part of an exempt process.
- 7. When used by entities occupationally engaged in agricultural production, shuttle tanks and pumps for crop protection products are exempt because these items are used during the planting process to mix and move exempt items from *temporary* locations directly to the field where they will be used as an essential and integrated part of an exempt process. In most cases, these items are carried by trucks that may have alternative uses that are taxable.

The Department revised Sales Tax Information Bulletin 9 in November of 2015 (effective January 1, 2016). The November 2015 version of the bulletin removed the "Corporation C" example. In a 2016 Letter of Findings ("LOF") the Department stated "that Example 5" in the 2012 Sales Tax Information Bulletin 9 was "incorrect" and was not "and will not be considered a valid source of information from the Indiana Department of Revenue" (Letter of Findings 04-20150642 (May 27, 2016), 20160727 Ind. Reg. 045160303NRA). Additionally, the Department notes that Information Bulletins have a "DISCLAIMER" that states: "Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer." The disclaimer also states that Information Bulletins are "nontechnical assistance to the general public." The Department also notes that even if, *arguendo*, Taxpayer relied upon Example 5 in the 2012 iteration of Sales Tax Information Bulletin 9, that reliance would be limited by the scope of the example itself—which is specifically about an "applicator," while the

photographs and explanation that Taxpayer provided subsequent to the hearing are of trailers, "liquid fertilizer tender," repair parts for a semi-tractor, and repair parts for "dry fertilizer tender trailer" (in the photographs provided by Taxpayer, these are trucks that look similar to dump trucks). Also, any purported reliance on Example 5 would be further limited to the years 2014 and 2015, since the Information Bulletin was updated in November 2015 (effective January 1, 2016).

Lastly, regarding Taxpayer's IC § 6-2.5-5-2 argument. The 2004 version of the statute stated in relevant part:

- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
    - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
    - (2) the person acquiring the property is *occupationally engaged* in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
    - (3) the machinery or equipment is designed for use in gathering, moving or spreading animal waste.
- (*Emphasis added*)

In 2016 the statute was amended, but still had the language in (b)(2) regarding being "occupationally engaged in the production of food or commodities. . . ." In 2017, the statute was amended again, this time adding subsection:

- (c) Transactions involving agricultural machinery or equipment, including material handling equipment purchased for the purpose of transporting materials into activities described in this subsection from an onsite location, are exempt from the state gross retail tax if the person acquiring the property:
  - (1) acquires it for the person's direct use in:
    - (A) the direct application of fertilizers, pesticides, fungicides, seeds, and other tangible personal property; or
    - (B) the direct extraction, harvesting, or processing of agricultural commodities;
  - for consideration; and
  - (2) is occupationally engaged in providing the services described in subdivision (1) on property that is:
    - (A) owned or rented by another person occupationally engaged in agricultural production; and
    - (B) used for agricultural production.

Taxpayer lists this as the "Controlling Law," but the years at issue are before 2017, so Taxpayer is mistaken. The 2004 and 2016 versions of the IC § 6-2.5-5-2 are the controlling law for the period of Taxpayer's protest (2014-2016). Taxpayer's argument regarding these protested items is denied. Taxpayer was not "occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production." Taxpayer's protest is denied in regards to the fertilizer applicator repair parts.

### ***Fertilizer Blender and Feed Mill Repair Parts***

Next Taxpayer argues that the fertilizer blender is exempt from sales tax. Taxpayer states:

Fertilizer applied to farm fields must be mixed from a variety of chemical inputs []. These distinct chemical elements are required to be mixed together in proportions dictated by soil test results. The mixture is necessary to alleviate soil test crop nutrient imbalances; nutrient deficiencies; and maximize crop yield for the type of crop that is to be grown in a particular field that year. Absent the mixing of ingredients, the farmer would be forced to apply each ingredient separately which would be time consuming, would cause unnecessary soil compaction by increasing trips over the field, and would increase costs with a separate charge for each separate application. . . . Documentation in the form of the South Dakota State and USDA Fertilizer Recommendation Guide and actual *TAXPAYER* customer soil tests demonstrate the need for proper blends of fertilizer inputs. *AZTEC Partners v. Indiana State Department of Revenue* established a minimum threshold of what the Indiana Tax Court considers to be manufacturing under Indiana law. *TAXPAYER's* integrated process of made-to-order fertilizer manufacturing greatly exceeds that threshold level.

Taxpayer also argues in a similar fashion that its feed mill repair parts are also exempt. The feed mill is used to grind grains into a particle size that will allow for proper animal digestion. Taxpayer cites to *Aztec* to support its argument. Taxpayer argues that the Department ignored the blending process taking place in creation of its blended fertilizer and the change that occurs when the grain is ground in the feed mill. IC § 6-2.5-5-3(b) provides:

Except as provided in subsection (c), transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Therefore, tangible personal property - such as equipment used in Taxpayer's fertilizer blender and feed mill replacement parts- must be directly used in the direct production of other tangible personal property in order to qualify for the exemption found in IC § 6-2.5-5-3(b).

The Department's regulation, [45 IAC 2.2-5-10](#)(k) provides:

Processing or refining is defined as the performance by a business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. *The change in form, composition, or character must be a substantial change.* Operations such as distilling, brewing, pasteurizing, electroplating, galvanizing, anodizing, impregnating, cooking, heat treating, and slaughtering of animals for meal or meal products are illustrative of the types of operations which constitute processing or refining, although any operation which has such a result may be processing or refining. *A processed or refined end product, however, must be substantially different from the component materials used.*

*(Emphasis added).*

The Department is unable to agree that Taxpayer has met its burden of demonstrating that the blending equipment and feed mill repair parts are exempt from sales/use tax because the equipment is not used for "direct use in the direct production . . . [or] processing . . . of other tangible personal property." IC § 6-2.5-5-3(b). The blended fertilizer and ground feed are not "substantially different from the components used." [45 IAC 2.2-5-10](#)(k). Blended fertilizer is still essentially "fertilizer." Ground feed mill is still essentially "feed mill." Taxpayer therefore has not met its burden as required by IC § 6-8.1-5-1(c) to prove the assessment incorrect.

#### FINDING

Taxpayer's protest as it relates to the fertilizer applicator is denied. Taxpayer's protest of feed mill equipment is denied. Taxpayer is also denied regarding the fertilizer blender.

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